

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-122021-14
Date: November 24, 2014

LEGEND

X =

Trust =

A =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

\$n =

Years =

Dear _____ :

This letter responds to a letter dated May 29, 2014, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation effective Date 2. On Date 3, A, a shareholder in X died. Pursuant to the terms of A's will, A's estate transferred shares of X to Trust on Date 4. Trust qualified under § 1361(c)(2)(A)(iii) as an eligible shareholder for a two-year period beginning on the day shares of X were transferred to it. X represents that Trust qualified as an electing small business trust (ESBT) within the meaning of § 1361(e). However, the trustee of Trust failed to make an election under § 1361(e)(3) to treat Trust as an ESBT. As a result, X's S corporation election terminated on Date 5 after the end of the two-year period described in § 1361(c)(2)(A)(iii).

X represents that the failure to file the ESBT election for Trust and the resulting termination of X's S corporation election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

LAW

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(iii) provides that, for purposes of § 1361(b)(1)(B), a trust with respect to stock transferred to it pursuant to the terms of a will is a permitted shareholder of an S corporation for the 2-year period beginning on the day on which such stock is transferred to it.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1361(b)(1)(B), an ESBT is a permitted shareholder of an S corporation.

Section 1361(e)(1)(A) provides that except as provided in § 1361(e)(1)(B), the term "electing small business trust" means any trust if -- (i) the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in § 170(c)(2), (3), (4), or (5), or an organization described in § 170(c)(1) that holds a contingent interest in the trust and is not a potential current beneficiary; (ii) no interest in the trust was acquired by purchase; and (iii) an election under § 1361(e) applies to the trust.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) of the Income Tax Regulations provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was terminated on Date 5 when the trustee of the Trust failed to file an ESBT election under § 1361(e)(3) for the Trust. We also conclude that the

termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on and after Date 5, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the trustee of Trust filing an ESBT election effective Date 5 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election.

In addition, this ruling is contingent on Trust filing any amended returns and making adjustments that are necessary to properly reflect the treatment of Trust as an ESBT for Years taxable years.

Furthermore, as an adjustment under § 1362(f), a payment of \$n and a copy of this letter ruling must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41011, Stop 31, Terri Lackey, Manual Deposit. The payment and a copy of this letter must be sent no later than Date 6.

If all of the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S corporation election has terminated to the service center with which X's S corporation election was filed.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the facts of this case under any other provisions of the Code. Specifically, we express no opinion as to whether X is otherwise eligible to be treated as an S corporation or Trust is eligible to be treated as an ESBT.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes